

CITY OF SAN JOSÉ, CALIFORNIA
Department of Planning, Building and Code Enforcement
801 North First Street, Room 400
San José, California 95110-1795

Hearing Date/Agenda Number
07/28/04 Item: 4.b.

File Number
CP03-074

Application Type
Conditional Use Permit

Council District
6

Planning Area
Willow Glen

Assessor's Parcel Number(s)
429-20-046, -047, -048, -049, -050

STAFF REPORT

PROJECT DESCRIPTION

Completed by: Erin Morris

Location: Southwest corner of Bird Avenue and Minnesota Avenue (1409 Bird Avenue)

Gross Acreage: 3.88

Net Acreage: 3.88

Net Density: n/a

Existing Zoning: CN Commercial
Neighborhood

Existing Use: Shopping center (Willow Glen Village)

Proposed Zoning: No change

Proposed Use: (1) Demolition of an existing 23,237 square foot building; (2) Construction of a new 32,196 square foot building for grocery store use (Albertsons) with associated site improvements; (3) Off-sale of alcoholic beverages; and (4) 24-hour operation of the grocery store

GENERAL PLAN

Completed by: ELM

Land Use/Transportation Diagram Designation
Neighborhood/Community Commercial

Project Conformance:
☒ Yes ☐ No
☐ See Analysis and Recommendations

SURROUNDING LAND USES AND ZONING

Completed by: ELM

North: Single-family residential

R-1-8 Residence District

East: Single-family residential

R-1-8 Residence District

South: Single-family residential

R-1-8 Residence District

West: Multi-family residential & offices

A(PD) Planned Development

ENVIRONMENTAL STATUS

Completed by: ELM

☐ Environmental Impact Report found complete
☒ Mitigated Negative Declaration pending adoption on July 26, 2004

☐ Exempt
☐ Environmental Review Incomplete

FILE HISTORY

Completed by: ELM

Annexation Title: Willow Glen

Date: 10/01/1936

PLANNING DEPARTMENT RECOMMENDATIONS AND ACTION

☐ Approval
☒ Approval with Conditions
☐ Denial
☐ Uphold Director's Decision

Date: July 21, 2004

Approved by: _____
☒ Action
☐ Recommendation

APPLICANT/ OWNER

Albertsons
Attn: Kent Heasley
P.O. Box 20
Boise, ID 83726

Mission Square Shopping Center, LTD
Attn: Bill Tribolet
11750 Sorrento Valley
San Diego, CA 92121-1025

PUBLIC AGENCY COMMENTS RECEIVED**Completed by:** ELM

Department of Public Works

See attached memorandum

Other Departments and Agencies

See attached memorandum from the Police Department-Environmental Design, Police Department-Vice Unit, the Fire Department, and the Environmental Services Department

GENERAL CORRESPONDENCE

See attached correspondence from Matt Hall dated July 21, 2004; Sonya Cortero dated July 20, 2004; Chris Arriola dated July 20, 2004; Howard Bjerke dated July 19, 2004; Jack Bonno dated July 7, 2004; Matt Hall dated June 17, 2004; Amy Flores dated May 9, 2004; Corliss Hutchinson dated April 20, 2004; Bob Bearden dated April 14, 2004; Tony Filice dated April 14, 2004; Amy Flores dated March 24, 2004; Maureen Burkley dated March 13, 2004; Matt Hall dated March 2, 2004; J. Buckley dated February 26, 2004; Jean Dresden dated February 16, 2004; Cecilia Quick dated February 8, 2004; Lorie Bowlby dated February 4, 2004; Caroline Alemany dated February 4, 2004; Pat Coleman dated February 4, 2004; Deb Hollis dated February 3, 2004; Joyce Fee dated February 3, 2004; David Ginsborg dated February 3, 2004; Kelly Burnett dated February 3, 2004; Kari Smyth dated February 2, 2004; Matt Hall dated January 23, 2004.

ANALYSIS AND RECOMMENDATIONS

BACKGROUNDProject Description & Surrounding Uses

The applicant, Mission Square Shopping Center LTD, is requesting a Conditional Use Permit (CUP) to allow demolition of a 24,000 square foot retail building, including a grocery store (Albertsons), at an existing shopping center (Willow Glen Village), and replacement with a new 33,000 square foot grocery store. The proposal includes 24-hour operation and the off-sale of alcoholic beverages for the grocery store. The Zoning Code requires a Conditional Use Permit for operation of a commercial use between 12:00 midnight and 6:00 a.m. and for the off-sale of alcoholic beverages. This CUP also functions as the Site Development Permit allowing construction of specific site improvements.

The 3.88 gross acre site is located on the southwest corner of Bird Avenue and Minnesota Avenue and is surrounded with single-family residential uses to the north, south, and east, and multi-family and an office use to the east. The site is developed with a shopping center including an existing 23,240 square foot Albertsons grocery store which is currently licensed for off-sale of alcohol, and approximately 20,200 square feet of shops including small neighborhood-serving commercial businesses. The existing shopping center was developed in the late 1960s. In 2003, the site was rezoned from CP Commercial Pedestrian to CN Commercial Neighborhood to reflect the pattern of development on the site.

Existing Conditions

The existing shopping center contains approximately 43,500 square feet of commercial uses including the existing 23,000 square foot grocery store. The grocery store has an outdoor loading dock in the area between the store and adjoining residential properties to the south, and a parking area behind the existing grocery store (near the southwest corner of the subject property). A wood fence atop a short retaining wall and a thin row of maple trees currently separate the outdoor loading activities from the residential properties to the south. An existing wall of between six to eight feet is located between the subject site and residential uses to the west. Existing lighting behind the grocery store and shops does not meet the City's lighting policy and rooftop mechanical equipment is not fully screened.

The main parking lot, used by customers visiting the existing grocery store and shops, is accessed from both Bird Avenue and Minnesota Avenue. Existing parking lot lighting, both building and pole-mounted, does not provide sufficient illumination consistent with the City's lighting policy. There are mature trees along the perimeter of the parking lot including Liquidambar and Chinese Pistache, and Magnolia trees are located within the parking area. There is one small cart storage area within the parking lot while the remainder of cart storage is provided in front of and behind the existing grocery store. A full-service grocery store has sold alcohol for off-site consumption at this location since the construction of the shopping center in the 1960s, prior to the City's requirement for a Conditional Use Permit (CUP). The grocery store does not currently operate between 12:00 midnight and 6:00 a.m.

PUBLIC OUTREACH

Two community meetings were held for the subject CUP application and the developer has held additional meetings with members of the community prior to and during the application process. The first community meeting was held on April 21, 2004 at the Willow Glen United Methodist Church and had approximately 50 people in attendance. Community members expressed numerous concerns about the proposed project, including the condition, quality, and operational impacts of the existing grocery store, and concern about traffic, noise, and construction impacts related to construction of a larger grocery store. Many community members expressed support for the existing small businesses located within the shopping center and concern about displacement of the businesses and the impact to the businesses during construction. The main concerns expressed by community members relate to the proposed late-night operation of the store; specifically, concern about early morning and late night loading activities and a potential influx of out-of-area customers during the night due to the 24-hour operation.

The second community meeting was held on July 20, 2004. The applicant presented the revised plans to highlight how concerns raised at the first community meeting had been addressed. While some residents expressed continued concern about the proposed 24-hour operation, others stated their belief that the proposed improvements, the proposed Mitigation Management Plan, and future meetings between the store operators and the community could address those concerns. Planning staff has included a condition in this CUP requiring the store management to meet with the community approximately 6 months after the store opens to address any operational concerns, if 24-hour operation is approved.

Notices of the public hearing for this project were sent to all property owners and tenants within 1000 feet of the subject property. Planning staff has received a considerable amount of correspondence (see attached) and telephone calls regarding the project, and has responded to

ENVIRONMENTAL REVIEW

The environmental impacts of this project were addressed in an Initial Study and Mitigated Negative Declaration, which identified mitigation to reduce potentially significant impacts to non-significant levels in the areas of air quality, geology and soils, hydrology and water quality, and noise. Based on these analyses and proposed mitigation, the Negative Declaration concludes that the project will not result in a significant environmental impact.

GENERAL PLAN CONFORMANCE

The subject parcel is designated Neighborhood/Community Commercial on the San José 2020 General Plan Land Use/Transportation Diagram. This designation applies primarily to shopping centers of a neighborhood or community scale such as the existing shopping center. The intent of this designation is to foster neighborhood-serving retail and service establishments. Given that the project proposes reconstruction and rehabilitation of an existing older shopping center with existing and proposed neighborhood-serving commercial uses, the proposed project is consistent with this designation.

ANALYSIS

The primary issues for the proposed project are: 1) Site Improvements and Neighborhood Compatibility; 2) Conformance with 24 Hour Use Policy; and 3) Off-sale of Alcoholic Beverages

Site Improvements

Proposed Improvements. The project proposes to demolish the entire 23,000 square foot grocery store building and approximately 1400 square feet of the adjoining shop building, and construct a new 32,196 square-foot grocery store. The proposed grocery store includes an internal loading dock designed so that trucks back into the sealed dock and goods are unloaded from the truck inside the store, unlike the existing outdoor unloading. The project proposes to replace the existing wood fence located along the southern residential property line with an eight-foot concrete block screen wall, and to replace the existing maple trees with a new 10-foot wide landscape strip including fifteen 15-gallon redwood trees and assorted shrubs. The enlargement of the new building reduces the broad area behind the store near the southwest corner of the subject site, eliminating outdoor storage, parking, and other outdoor activities.

The project proposes to remove all existing wall-mounted lighting (including flood lights) on the shops to remain and replace them with new full-cutoff light fixtures that will provide adequate illumination of the drive aisle behind the store in conformance with the City's lighting policy. The new grocery store is designed with roof screens that will hide all new mechanical equipment from adjacent residences and the surrounding streets. Mechanical equipment on the existing shop buildings is to be replaced with new equipment, and new roof screens will hide and attenuate the noise from the new, quieter equipment. Staff has included a condition of approval requiring that all new equipment be screened and noise attenuated such that the noise does not exceed 55 dBA at the property lines.

The main parking lot will remain in the same location. Because the enlarged grocery store will have a greater setback from the southern property line than the existing store, the parking lot will

one of the existing driveways on Bird to align with the new grocery store building, and to realign the existing driveway on Minnesota Avenue. The project proposes a mixture of full and compact-sized parking spaces in a number that slightly exceeds the requirements of the Zoning Code, with 40% of the spaces provided as compact-sized spaces.

The reconfiguration of the parking lot necessitates removal of the 8 Magnolia trees located within the surface parking lot. Originally proposed to be maintained, the retention of the trees became a significant constraint that prevented the design of a more efficient parking lot with maximized landscaping opportunities both within and at the edges of the parking lot. The applicant is proposing to replace the existing trees within the parking lot with twelve 24-inch-box shade canopy trees and eight Crepe Myrtle trees. The Crepe Myrtle trees, while not shade trees, are proposed as accent trees within the narrower landscape areas within the parking lot. The proposed parking lot design reduces the size of the landscape area on the northeast corner and the northern edge of the lot in order to provide sufficient parking consistent with City standards, but the design would expand the width of the landscape strip along Bird Avenue by 6 feet, resulting in an 11-foot wide landscape strip and a corner landscape feature.

Operations Improvements. As described above, the project proposes numerous improvements to reduce noise impacts on adjoining residences. The new loading dock is enclosed such that trucks back up into the dock surrounded by a gasket that reduces exterior noise and allows all unloading activities to occur inside the store. The proposed sound wall along the southern property line is designed to reduce the noise level from activities occurring at the dock to below 55 dBA, consistent with City standards.

The trash compactor is located behind the store but is loaded from within the store. There is a sound wall directly adjacent to the trash compactor. The applicant has agreed to a condition specifying that the trash compactor will not be operated between the hours of 12:00 midnight and 6:00 a.m. The existing building-mounted equipment on the shop building will be replaced with new, quieter equipment and roof screens will be installed to attenuate noise and visual impacts. The project includes gates on each side of the shopping center that will restrict access to the area behind the store between the hours of 12:00 midnight to 6:00 a.m. The gates will automatically close and remain closed during that time period.

Planning staff has recommended numerous standard and special construction conditions to address noise concern and reduce impacts during construction.

24-Hour Use (After Midnight Operation)

The City Council Policy addressing 24-hour uses has specific guidelines to determine if a 24-hour use or a use operating between the hours of 12:00 midnight and 6:00 a.m. is appropriate and if it is compatible with surrounding land uses. The Guidelines provide measures to reduce the potential negative impacts late night uses might impose on neighboring land uses. The Guidelines establish the following criteria to determine compatibility: area use compatibility, use separation, noise control, and provision of a mitigation management plan.

The Policy states that location is an important criterion and that 24-hour uses should not be approved unless the facility can operate without detriment to nearby residential uses or the general welfare of the surrounding areas. The separation of uses is also identified as an important guideline to minimize potential impacts on more sensitive neighboring uses, and after midnight uses should generally not be located within 300 feet of residential development. The project site

north, south, and east, with multi-family residential and an office use to the west. The grocery store proposed for 24-Hour Operation is oriented toward a large parking lot that is accessed from Bird and Minnesota Avenues.

The City Council Policy specifies that it is important to minimize noise impacts from late night uses. Of particular concern to the community and staff is the potential late-night noise impacts of loading and trash compactor activities occurring behind the grocery store within close proximity to residential. As described in the *Site Improvement* section above, the plans include gates that prevent all vehicular access to the area located behind the grocery store and shop building. The Mitigation Management Plan proposed by the applicant provides that the gates would automatically close at midnight and automatically open at 6:00 a.m., ensuring that no unloading or trash pickup could occur between 12:00 midnight and 6:00 a.m. At the 2nd community meeting, the applicant indicated that their trash collection company has agreed to arrange trash collection during those times when the gates are open, and that they would continue to work with the garbage company to prevent garbage pickup prior to 8:00 a.m. The applicant has agreed not to utilize the trash compactor during the late-night time period. Staff has included numerous conditions of approval relative to the operation and maintenance of the gates to prevent unauthorized access, and conditions requiring that the trash compactor not be operated between 12:00 midnight and 6:00 a.m. The uses proposed in the project will be conditioned to not exceed the noise level maximum established by the Zoning Code for properties within the Commercial zoning districts. Noise generated at this facility cannot exceed 55 dBA at the nearest property line.

The Policy requires that a Mitigation Management Plan be provided for all after midnight uses to ensure compliance with the conditions of approval. As conditions of approval, the applicant shall control the litter emanating from the site on a daily basis for a distance of 300 feet along public streets from the site and the operator shall maintain a liaison with the Police Department to effectively control crime, drug, gang and other police problems. As stated in the Police Department memorandum, there were a total of 84 calls for service and 10 incidents at the shopping center during the 17-month period between January 1, 2004 and May 24, 2004. The Police Memorandum also indicates that large numbers of police contacts are not unusual for shopping centers and that all of the calls and reported incidents may not be necessarily associated with the existing Albertsons grocery store. The memorandum concluded that the Police Department does not anticipate any significant law enforcement problems with the store at this time or its increase to 24-hour operation.

Off-Sale of Alcoholic Beverages

The project proposes the sale to consumers of alcoholic beverages in original, unopened packages for consumption off the premises where sold. The Zoning Ordinance requires a Conditional Use Permit for off-sale alcohol in the CN Commercial Neighborhood Zoning District. In accordance with Section 20.80.900, the Planning Commission may issue the Conditional Use Permit for off-sale of alcoholic beverages only upon making the following findings, where applicable:

1. *For such a use at a location closer than 500 feet from any other such use either within or outside the City that the proposed location of the off-sale alcohol use would not contribute to an excess concentration of establishments which sell alcoholic beverages.* The proposed use is within 500 feet of one other such use. There is a liquor store within the subject shopping center that sells alcohol for off-site consumption. However, the existing grocery store sells

indicates that the same off-sale license would be applied to the new grocery store for the existing tenant once construction is complete. Therefore, Planning staff has determined that allowing the new facility to sell alcohol for consumption off-site as an ancillary use to the new full-service grocery store would not contribute to an excess concentration of such establishments in the immediate vicinity.

2. *For such a use at a location closer than 500 feet from any child care center, elementary school, secondary school, college or university, or one hundred fifty (150) feet from any residentially zoned property that the building in which the proposed use is to be located is situated and oriented in such a manner that would not adversely affect such residential and/or school use.* The project site is not located within 500 feet of any schools or childcare centers but is directly adjacent to residentially zoned and used property; however, the walking distance from the store entry to the nearest residence is in excess of 250 feet. Additionally, the remodeled commercial center is designed in a manner that does not orient the public entryways towards the adjacent residential properties and the proposed location/site is not directly accessible by such properties. Therefore, staff has concluded that such a use at this location would not pose a detriment to the surrounding neighborhood and uses.

Planning staff coordinated with the Department of Alcoholic Beverage Control and Police Department staff regarding whether a Liquor License Exception would be necessary for the off-sale of alcohol in association with the new grocery store. Although the site is located within an area of overconcentration relative to off-sale of alcoholic beverages, the ABC confirmed that a Liquor License Exception is not necessary because the existing store tenant has an existing license that will be transferred to the new store and the same address will be maintained.

Based on the above analysis, Planning staff believes that the relevant findings above can be made to allow the ongoing off-sale of alcoholic beverages at the full-service grocery store.

RECOMMENDATION

Planning staff recommends that the Planning Commission approve the Conditional Use Permit with the conditions of approval and include the following facts and findings in its resolution:

After considering evidence presented at the Public Hearing, the Planning Commission finds that the following are the relevant facts regarding this proposed project:

1. The applicant, Mission Square Shopping Center LTD, is requesting a Conditional Use Permit (CUP) to allow demolition of a 24,000 square foot retail building, including a grocery store (Albertsons), at an existing shopping center (Willow Glen Village), and replacement with a new 33,000 square foot grocery store.
2. The proposal includes 24-hour operation and the off-sale of alcoholic beverages for the grocery store.
3. The Zoning Code requires a Conditional Use Permit for operation of a commercial use between 12:00 midnight and 6:00 a.m. and for the off-sale of alcoholic beverages.
4. This CUP also functions as the Site Development Permit allowing construction of specific site improvements.

5. The 3.88 gross acre site is located on the southwest corner of Bird Avenue and Minnesota Avenue and is surrounded with single-family residential uses to the north, south, and east, and multi-family and an office use to the east.
6. The site is developed with a shopping center including an existing 23,240 square foot Albertsons grocery store, which is currently licensed for off-sale of alcohol, and approximately 20,200 square feet of shops including small neighborhood-serving commercial businesses.
7. The existing shopping center was developed in the late 1960s.
8. In 2003, the site was rezoned from CP Commercial Pedestrian to CN Commercial Neighborhood to reflect the pattern of development on the site.
9. The environmental impacts of this project were addressed in an Initial Study and Mitigated Negative Declaration, which identified mitigation to reduce potentially significant impacts to non-significant levels in the areas of air quality, geology and soils, hydrology and water quality, and noise. Based on these analyses and proposed mitigation, the Negative Declaration concludes that the project will not result in a significant environmental impact.
10. The subject parcel is designated Neighborhood/Community Commercial on the San José 2020 General Plan Land Use/Transportation Diagram. Given that the project proposes reconstruction and rehabilitation of an existing older shopping center with existing and proposed neighborhood-serving commercial uses, the proposed project is consistent with this designation.
11. The project proposes to demolish the entire 23,000 square foot grocery store building and approximately 1400 square feet of the adjoining shop building, and construct a new 32,196 square-foot grocery store.
12. The proposed grocery store includes an internal loading dock designed so that trucks back into the sealed dock and goods are unloaded from the truck inside the store, unlike the existing outdoor unloading.
13. The project proposes to replace the existing wood fence located along the southern residential property line with an eight-foot concrete block screen wall, and to replace the existing maple trees with a new 10-foot wide landscape strip including fifteen 15-gallon redwood trees and assorted shrubs.
14. The enlargement of the new building reduces the broad area behind the store near the southwest corner of the subject site, eliminating outdoor storage, parking, and other outdoor activities.
15. The project proposes to remove all existing wall-mounted lighting (including flood lights) on the shops to remain and replace them with new full-cutoff light fixtures that will provide adequate illumination of the drive aisle behind the store in conformance with the City's lighting policy.
16. The new grocery store is designed with roof screens that will hide all new mechanical equipment from adjacent residences and the surrounding streets.

17. Mechanical equipment on the existing shop buildings is to be replaced with new equipment, and new roof screens will hide and attenuate the noise from the new, quieter equipment.
18. The parking lot will be reconfigured to eliminate one of the three existing driveways onto Bird Avenue, to relocate one of the existing driveways on Bird to align with the new grocery store building, and to realign the existing driveway on Minnesota Avenue.
19. The project proposes a mixture of full and compact-sized parking spaces in a number that slightly exceeds the requirements of the Zoning Code, with 40% of the spaces provided as compact-sized space.
20. The reconfiguration of the parking lot necessitates removal of eight non-ordinance sized Magnolia trees located within the surface parking lot.
21. The applicant is proposing to replace the existing trees within the parking lot with twelve 24-inch-box shade canopy trees and eight Crepe Myrtle trees. The Crepe Myrtle trees, while not shade trees, are proposed as accent trees within the narrower landscape areas within the parking lot.
22. The new loading dock is enclosed such that trucks back up into the dock surrounded by a gasket that reduces exterior noise and allows all unloading activities to occur inside the store. The proposed sound wall along the southern property line is designed to reduce the noise level from activities occurring at the dock to below 55 dBA, consistent with City standards.
23. The trash compactor is located behind the store but is loaded from within the store. There is a sound wall directly adjacent to the trash compactor.
24. The applicant has agreed not to utilize the trash compactor during the late-night time period. Staff has included numerous conditions of approval relative to the operation and maintenance of the gates to prevent unauthorized access, and conditions requiring that the trash compactor not be operated between 12:00 midnight and 6:00 a.m.
25. The uses proposed in the project will be conditioned to not exceed the noise level maximum established by the Zoning Code for properties within the Commercial zoning districts. Noise generated at this facility cannot exceed 55 dBA at the nearest property line.
26. The plans include gates that prevent all vehicular access to the area located behind the grocery store and shop building. The gates would automatically close at midnight and automatically open at 6:00 a.m., ensuring that no unloading or trash pickup could occur between 12:00 midnight and 6:00 a.m.
27. The 24-Hour Use Policy requires that a Mitigation Management Plan be provided for all after midnight uses to ensure compliance with the conditions of approval.
28. As conditions of approval, the applicant shall control the litter emanating from the site on a daily basis for a distance of 300 feet along public streets from the site and the operator shall maintain a liaison with the Police Department to effectively control crime, drug, gang and other police problems.

29. There were a total of 84 calls for service and 10 incidents at the shopping center during the 17-month period between January 1, 2004 and May 24, 2004. The large number of police contacts are not unusual for shopping centers and all of the calls and reported incidents may not be necessarily associated with the existing Albertsons grocery store.
30. The Police Department does not anticipate any significant law enforcement problems with the store at this time or its increase to 24-hour operation.
31. The proposed use is within 500 feet of one other such use in that there is a liquor store within the subject shopping center that sells alcohol for off-site consumption. However, the existing grocery store sells alcohol for off-site consumption and the Department of Alcoholic Beverage Control (ABC) indicates that the same off-sale license would be applied to the new grocery store for the existing tenant once construction is complete. Allowing the new facility to sell alcohol for consumption off-site as an ancillary use to the new full-service grocery store would not contribute to an excess concentration of such establishments in the immediate vicinity.
32. The project site is not located within 500 feet of any schools or childcare centers but is directly adjacent to residentially zoned and used property; however, the walking distance from the store entry to the nearest residence is in excess of 250 feet.
33. The remodeled commercial center is designed in a manner that does not orient the public entryways towards the adjacent residential properties and the proposed location/site is not directly accessible by such properties. Such a use at this location would not pose a detriment to the surrounding neighborhood and uses.
34. Although the subject site is located within an area of overconcentration relative to off-sale of alcoholic beverages, a Liquor License Exception Permit is not necessary because the existing store tenant has an existing license that will be transferred to the new store and the same address maintained.

The Planning Commission, based on the facts above, finds the following:

1. The proposed project is consistent with the adopted San José 2020 General Plan Land Use/Transportation Diagram of the City of San José.
2. The proposed project complies with all applicable provisions of the Zoning Ordinance.
3. The proposed project is in compliance with the California Environmental Quality Act.
4. Although the subject site is located within 500 feet of another off-sale alcohol use, the project is consistent with the Zoning Ordinance criteria for approval of off-sale alcoholic beverages,
5. Although the subject site is located within 500 feet of a residential land use, the off-sale of alcoholic beverages will not adversely affect the surrounding residential neighborhood in that the site is adequately buffered from such uses by building orientation.

Finally, based upon the above-stated findings and subject to the conditions set forth below, the Planning Commission finds that:

- a. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or
 - b. Impair the utility or value of property of other persons located in the vicinity of the site; or
 - c. Be detrimental to public health, safety or general welfare; and
2. The proposed site is adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping and other development features prescribed in this title, or as is otherwise required in order to integrate said use with the uses in the surrounding areas; and
3. The proposed site is adequately served:
 - a. By highways or streets of sufficient width and improved as necessary to carry the kind and quality of traffic such use would generate; and
 - b. By other public or private service facilities as are required.
4. For such a use at a location closer than five hundred (500) feet from any other such use situate either within or outside the City that the proposed location of the off-sale alcohol use would not contribute to an excess concentration of establishments which sell alcoholic beverages.
5. For such a use closer than five hundred (500) feet from any child care center, elementary school, secondary school, college or university, or one hundred fifty (150) feet from any residentially zoned property that the building in which the proposed use is to be located is situate and oriented in such a manner that would not adversely affect such residential and/or school use.
6. The interrelationship between the orientation, location and elevations of the proposed building(s) and structure(s) and other uses on-site are mutually compatible and aesthetically harmonious in that:
 - a. The architectural elements of the proposed structure(s) are integrated into a harmonious whole.
 - b. Sufficient open space separates all structure(s) and uses.
 - c. Loading areas are located so as not to interfere with other uses.
 - d. Sufficient maneuvering room will be provided on site to allow smooth circulation and minimize interference with other uses.
 - e. Parking spaces are conveniently located in relation to the uses they support.
7. The orientation, location and elevation of the proposed building(s) and structure(s) and other uses on the site are compatible with and are aesthetically harmonious with adjacent development or the character of the neighborhood in that:

- a. The exterior wall and roof materials of the proposed structure(s) on site match or are compatible with the materials of existing adjacent or nearby structures.
 - b. The structure(s) proposed on site are comparable in terms of mass, scale and height with existing adjacent or nearby structures.
 - c. The proposed structure(s) do not unreasonably interfere with the light and air available to adjacent sites.
 - d. The privacy of adjacent sites will be protected by adequate screening of, or orientation of activities away from, privacy sensitive areas adjacent to the site.
 - e. The use of the site will not interfere with the use of adjacent properties since sufficient buffering between uses will be provided.
8. Landscaping, irrigation systems, walls and fences, features to conceal outdoor activities, exterior heating, ventilating, plumbing, utility and trash facilities are sufficient to maintain or upgrade the appearance of the neighborhood in that:
- a. Substantial landscaping will be added to the site and an adequate automatic irrigation system will be provided to support this landscaping.
 - b. Outdoor activities, exterior heating, ventilating, plumbing, utility and trash facilities will be screened by parapets, fences, walls or other devices compatible with the architectural treatment of the structure.
9. Traffic access, pedestrian access and parking are adequate in that:
- a. Sufficient driveway curb cuts and driveways will be provided on site to provide access to the site without interfering with off-site circulation.
 - b. Pedestrian walkways will be provided to all major building entrances.
 - c. The proposed number and size of parking spaces complies with and exceeds the requirements of the Zoning Ordinance.

In accordance with the findings set forth above, a Conditional Use Permit to use the subject property for said purpose specified above and subject to each and all of the conditions hereinafter set forth are hereby granted. This Planning Commission expressly declares that it would not have granted this permit except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use conditionally permitted hereby.

CONDITIONS PRECEDENT

This Conditional Use Permit shall have no force or effect and the subject property shall not be used for the hereby permitted uses unless and until all things required by the below-enumerated

precedent conditions shall have been performed or caused to be performed and this Resolution has been recorded with the County Recorder.

1. **Acceptance and Payment of Recording Fees.** The "Acceptance of Permit and Conditions" form shall be **signed, notarized, and returned** to the Department of City Planning within **60 days** from the date of issuance of the resolution granting the permit. *Failure to do so will result in this permit automatically expiring regardless of any other expiration date contained in this permit.* Fees for recording a Certificate of Permit with the Recorder for the County of Santa Clara must be submitted along with the Acceptance Form.

CONCURRENT CONDITIONS

The subject property shall be maintained and utilized in compliance with the below-enumerated conditions throughout the life of the permit:

1. **Sewage Treatment Demand.** Chapter 15.12 of Title 15 of the San José Municipal Code requires that all land development approvals and applications for such approvals in the City of San José shall provide notice to the applicant for, or recipient of, such approval that no vested right to a Building Permit shall accrue as the result of the granting of such approval when and if the City Manager makes a determination that the cumulative sewage treatment demand of the San José-Santa Clara Water Pollution Control Plant represented by approved land uses in the area served by said Plant will cause the total sewage treatment demand to meet or exceed the capacity of San José-Santa Clara Water Pollution Control Plant to treat such sewage adequately and within the discharge standards imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region. Substantive conditions designed to decrease sanitary sewage associated with any land use approval may be imposed by the approval authority.
2. **Permit Expiration.** This Conditional Use Permit shall automatically expire two years from and after the date of adoption of the Resolution by the Planning Commission, or by the City Council on appeal, granting this Permit, if within such two-year period, the proposed use of this site or the construction of buildings has not commenced, pursuant to and in accordance with the provisions of this Conditional Use Permit. The date of adoption is the date the Resolution granting this Conditional Use Permit is approved by the Planning Commission. However, the Director of Planning may approve a Permit Adjustment to extend the validity of this Permit for a period of up to two years. The Permit Adjustment must be approved prior to the expiration of this Permit.
3. **Building Permit.** Obtainment of a Building Permit is evidence of acceptance of all conditions specified in this document and the applicant's intent to fully comply with said conditions.
4. **Conformance with Plans.** Construction and development shall conform to the approved development plans entitled, "Albertsons Store 7179," dated June 15, 2004, on file with the Department of Planning, Building and Code Enforcement and to the San José Building Code (San José Municipal Code, Title 17, Chapter 17.04).
5. **Revocation.** This Conditional Use Permit is subject to revocation for violation of any of its provisions or conditions.
6. **Conformance with Municipal Code.** No part of this approval shall be construed to permit a

7. **Construction Conformance.** A project construction conformance review by the Planning Division is required. Planning Division review for project conformance will begin with the initial plan submittal to the Building Division. Prior to final inspection approval by the Building Department, Developer shall obtain a written confirmation from the Planning Division that the project, as constructed, conforms with all applicable requirements of the subject Permit, including the plan sets. To prevent delays in the issuance of Building Permits, please notify Planning Division staff at least one week prior to the final Building Division inspection date.
8. **Construction Impact Mitigation Measures.** The applicant shall ensure that the following construction impact mitigation measures are fully complied with throughout the duration of all demolition and construction activities associated with this project and related off-site construction work. Failure to comply with these conditions by the applicant, their contractors or subcontractors shall be cause for shutdown of the project site until the City can ensure compliance with the following conditions.
 - a. *Notification.* Prior to construction activities, the applicant shall send a letter to all property owners and tenants within a 500-foot radius of the project. The letter shall include information about construction hours, deliveries, disturbance coordinator, contact telephone number, and anticipated project start date and timeline. A copy of the letter, with the reference file number CP03-074, shall be provided to the Planning Division.
 - b. *Construction Hours.* Construction activities shall be limited to the hours of 7:00 a.m. and 7:00 p.m. Monday through Friday for any on-site or off-site construction activities located within 500 feet of any residential unit.
 - c. *Construction Deliveries.* Deliveries shall not occur outside the above construction hours. All deliveries shall be coordinated to ensure that no delivery vehicles arrive prior to the opening of the gates to prevent the disruption of nearby residents.
 - d. *Fencing.* Security fencing shall wholly enclose the site. The gates to the project site shall remain locked during all other times, except for a fifteen-minute period immediately preceding and following the above hours of construction.
 - e. *Construction Employees.* Workers shall not arrive to the site until the opening of the project gates. The applicant shall designate a location without adjacent residential units for workers to wait prior to the opening of the project gates.
 - f. *Plans.* The construction hours shall be printed on all plans for the project used to construct the project.
 - g. *Mitigation Measure Disclosure.* These construction impact mitigation measures shall be included in all contract documents for the project to ensure full disclosure to contractors and subcontractors. In addition, the applicant is responsible to ensure the following occur prior to the issuance of a Building Permit for the project:
 - 1) *Disturbance Coordinator.* A disturbance coordinator shall be identified by the developer for this project. The disturbance coordinator shall be responsible for ensuring compliance with the hours of construction, site housekeeping, and other nuisance

- 2) *Daily Log.* The disturbance coordinator shall maintain a log of daily activities on the project, including but not limited to, verification of site closure activities, project cleanliness, complaints on site activities and conditions and dates and times of the coordinator's visits to the project if the coordinator is not solely responsible for this project site.
 - 3) *Telephone Contact.* A phone with answering machine for non-work hours shall be maintained during the duration of project construction. The phone number shall be a local call for surrounding residents.
 - 4) *Signage.* The name and phone number of the disturbance coordinator, the hours of construction limitations, City File Number CP03-074, city contact and phone number (department and phone number) shall be displayed on a weatherproof sign posted at each entrance to the project site.
 - 5) *Construction Equipment.* The contractor shall use "new technology" power construction equipment with state-of-the-art noise shielding and muffling devices. All internal combustion engines used on the project site shall be equipped with adequate mufflers and shall be in good mechanical conditions to minimize noise created by faulty or poorly maintained engine, drive-train and other components.
9. **Public Works Clearance for Building Permit(s):** Prior to the issuance of Building permits, the applicant will be required to have satisfied all of the following Public Works conditions (3-01002). The applicant is strongly advised to apply for any necessary Public Works permits prior to applying for Building permits.
- a. **Minor Improvement Permit:** The public improvements conditioned as part of this permit require the execution of a Minor Street Improvement Permit that guarantees the completion of the public improvements to the satisfaction of the Director of Public Works. This permit includes privately engineered plans, insurance, surety deposit, and engineering and inspection fees.
 - b. **Plan Revisions:** Revise plans to eliminate proposed modified radial return driveway access onto Minnesota Avenue (western driveway location) and instead use a standard 26' driveway apron with continuous sidewalk.
 - c. **Transportation:** An operational impact analysis has been performed by Hexagon Transportation Consultants. Public Works review concludes that the project presents no significant operational safety impacts and a determination for a negative declaration can be made with respect to traffic impacts.
 - d. **Grading/Geology:**
 - 1) A grading permit is required prior to the issuance of a Public Works Clearance. The construction operation shall control the discharge of pollutants (sediments) to the storm drain system from the site. An erosion control plan may be required with the grading application.
 - 2) The Project site is within the State of California Seismic Hazard Zone. A soil

to, reviewed and approved by the City Geologist prior to issuance of a grading permit or Public Works Clearance. The investigation should be consistent with the guidelines published by the State of California (CDMG Special Publication 117) and the Southern California Earthquake Center ("SCEC" report). A recommended depth of 50 feet should be explored and evaluated in the investigation.

e. Flood: Zone A0, Depth 1

- 1) Elevate the lowest floor to 1 foot above the highest existing adjacent grade to the proposed structure or floodproof to the same elevation. For insurance rating purposes, the building's floodproofed design elevation must be at least one foot above the base flood elevation to receive rating credit.
- 2) An Elevation Certificate (FEMA Form 81-31) for each proposed structure, based on construction drawings, is required prior to issuance of a building permit. Consequently, an Elevation Certificate for each built structure, based on finished construction is required prior to issuance of an occupancy permit.
- 3) If the structure is to be floodproofed, a Floodproofing Certificate (FEMA Form 81-65) for each structure, floodproofing details, a Flood Emergency Operation Plan, and an Inspection & Maintenance Plan are required prior to the issuance of a Public Works Clearance.
- 4) Building support utility systems such as HVAC, electrical, plumbing, air conditioning equipment, including ductwork, and other service facilities must be elevated above the base flood elevation or protected from flood damage.

f. Sewage Fees: In accordance with City Ordinance all storm sewer area fees, sanitary sewer connection fees, and sewage treatment plant connection fees, less previous credits, are due and payable.

g. Street Improvements:

- 1) Applicant shall be responsible to remove and replace curb, gutter, and sidewalk damaged during construction of the proposed project.
- 2) Remove and replace broken or uplifted curb, gutter, and sidewalk along project frontage.
- 3) Proposed driveway width to be 26'.
- 4) Repair, overlay, or reconstruction of asphalt pavement may be required. The existing pavement will be evaluated with the street improvement plans and any necessary pavement restoration will be included as part of the final street improvement plans.

h. Sanitary: The project is required to submit plan and profile of the private sewer mains with lateral locations for final review and comment prior to construction.

i. Electrical:

- 2) Relocation of electroliers along project frontages may be required.
- 3) Locate and protect existing electrical conduit in driveway and/or sidewalk construction.
- 4) Relamping existing HPS luminaires in electroliers along project frontage with LPS luminaires may be required.

j. Landscape:

- 1) Installation of additional street trees within the public right-of-way along the entire street frontage per City standards may be required.
- 2) The locations of the street trees will be determined at the street improvement stage. Street trees shown on this permit are conceptual only.
- 3) Contact the City Arborist at (408) 277-2756 for the designated street tree.

10. Fire Department Requirements:

- a. Fire Flow. Fire flow of 3,000 G.P.M. shall be provided from a minimum of 3 hydrants and shall be spaced apart on average 400 feet from the proposed project. Fire flow may be reduced upon construction of a four-hour wall, without openings, as per the adopted fire code. Construction of the area separation wall(s) is subject to review by the Fire Department.
- b. Street Numbers. Street numbers shall be visible day and night from the nearest street, either by means of illumination or by the use of reflective materials.
- c. Lock Boxes. Lock boxes or non-case hardened locks are required at gated entries. Lock boxes are required for buildings four or more stories and are recommended for buildings over 10,000 square feet.
- d. Fire Lanes. Fire lanes shall be suitably marked with standard signs, painted curbs, and/or other markers as approved or authorized for use by the Chief. Fire lane markings shall be indicated on plans submitted through the building permit process for review and approval by the Fire Department.
- e. Hazardous Materials. Any hazardous materials regulated by Chapter 17.68 of the San José Municipal Code on the site must be used and stored within approved buildings and/or within areas specified on the approved plan set, if any, in full compliance with the City's Hazardous Material Ordinance and the Hazardous Materials Management Plan for the site approved by the San José Fire Prevention Bureau.

11. Nuisance. This use shall be operated in a manner that does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City.

12. Building Clearance for Issuing Permits. Prior to the issuance of a Building Permit, the

- a. *Construction Plans.* This permit file number, CP03-074, shall be printed on all construction plans submitted to the Building Division.
 - b. *Emergency Address Card.* The project developer shall file an Emergency Address Card, Form 200-14, with the City of San José Police Department.
 - c. *Americans With Disabilities Act.* The applicant shall provide appropriate access as required by the Americans With Disabilities Act (ADA).
 - d. *Street Number Visibility.* Street numbers of the building shall be easily visible at all times, day and night.
 - e. *Lock Boxes.* The project developer shall provide lock boxes to the satisfaction of the Chief Building Official and the Fire Chief.
13. **Building Maintenance/Anti-Graffiti.** Graffiti shall be removed from buildings and wall surfaces within 48 hours of defacement. All building surfaces shall be maintained in good condition.
14. **Recycling.** Scrap construction material should be recycled. Integrated Waste Management staff at 277-5533 can provide assistance on how to recycle construction debris from the project, including information on available haulers and processors.
15. **Refuse.** All trash areas shall be effectively screened from view and covered and maintained in an orderly state to prevent water from entering into the garbage container. No outdoor storage is allowed/permitted unless designated on the approved plan set. Trash areas shall be maintained in a manner to discourage illegal dumping.
16. **Landscaping.** Planting and irrigation are to be provided, as indicated, on the final Approved Plan Set. Landscaped areas shall be maintained and watered and all dead plant material is to be removed and replaced by the property owner. Irrigation is to be installed in accordance with Part 4 of Chapter 15.10 of Title 15 of the San José Municipal Code, Water Efficient Landscape Standards for New and Rehabilitated Landscaping and the City of San José Landscape and Irrigation Guidelines.
17. **Certification.** Pursuant to San José Municipal Code, Section 15.10.486, certificates of substantial completion for landscape and irrigation installation shall be completed by licensed or certified professionals and provided to the Department of Planning, Building and Code Enforcement prior to approval of the final inspection of the project.
18. **Storm Water Discharge.** The applicant shall conform to the Non-Point Source Control requirement for storm water discharge associated with construction activity as required by the State Water Resource Control Board. Contact the Regional Water Quality Control Board at (415) 286-0968 for further information.
19. **Lighting.** On-site lighting shall use Low-Pressure Sodium fixtures and be designed, controlled and maintained so that no light source is visible from outside of the property.
20. **Landscape Maintenance.** Landscaping and trees shall be maintained on a regular basis to

21. **Litter.** The site shall be maintained free of litter. The applicant shall remove litter from the site and from properties within 300 feet of the site on a daily basis.
22. **Shopping Carts Management and Storage.** The applicant shall comply with Chapter 9.60 of San José Municipal Code regarding shopping carts. Shopping carts may only be stored in areas identified for such storage on the approved plan set.
23. **Outside Storage.** No outside storage is permitted except in areas designated on the approved plan set.
24. **Roof Equipment.** All roof equipment shall be screened from view.
25. **Utilities.** All on-site telephone, electrical and other overhead service facilities shall be placed underground.
26. **Colors and Materials.** All building colors and materials are to be those specified on the approved plan set.
27. **Tree Removal on Private Property.** No tree larger than 56 inches in circumference, at a height of 24 inches above the natural grade slope, shall be removed without a Tree Removal Permit issued by the Director of Planning.
28. **Tree Protection.** Trees proposed for retention shall be protected during all construction activities as shown on the approved plans.
29. **Irrigation Standards.** The applicant shall install an adequately sized irrigation distribution system with automatic controllers in all areas to be landscaped that conforms to the Zonal Irrigation Plan in the Approved Plan Set and is consistent with the City of San José Landscape and Irrigation Guidelines. The design of the system shall be approved and stamped by a California Registered Landscape Architect.
30. **Signage.** "No Trespassing/Loitering" SJMC 10.20.140 (A) and 10.20.140 (D) posted at the entrances of parking lots and located in other appropriate places. Signs must be at least 2'x1' in overall size, with white background and black 2" lettering. All entrances to parking areas shall be posted with appropriate signs per 22658(a) CVC, to assist in removal of vehicles at the property owners/managers request.
31. **Off-Sale of Alcoholic Beverages.** This permit allows the sale of alcoholic beverages for off-site consumption.
32. **Hours of Operation.** The grocery store is allowed to operate 24 hours a day 7 days a week. No loading or outdoor activity is allowed in the gated area behind the store and shops between the hours of 12:00 midnight and 6:00 a.m.
33. **Alcoholic Beverage Control.** The off-sale of alcoholic beverages is allowed in conformance with the requirements of the Department of Alcohol Beverage Control (ABC). The applicant shall obtain all necessary permits and maintain full compliance and in good standing with the Department of Alcoholic Beverage Control.

34. **Compliance With Local and State Laws.** The subject use shall be conducted in full compliance with all local and state laws. No part of this approval shall be construed to permit a violation of any part of the San José Municipal Code. The Permit shall be subject to revocation if the subject use is conducted in such a manner as to cause a nuisance, as defined above.
35. **Sign Approval.** Approval of signs is limited to those shown on the approved plans. Additional signage or modifications to the signage approved with this permit shall require a Sign Adjustment Permit approved by the Director of Planning.
36. **STOP Program.** The applicant shall participate in the City of San José Police Department's STOP (Stop Trespassing on Public/Private Property) Program by maintaining a current STOP Registration and shall maintain a liaison with the Police Department regarding any illegal activities occurring on the site.
37. **Community Meeting.** In coordination with Planning staff, the applicant shall arrange a community meeting six months after store opening to discuss store operation and site management issues.
38. **Enclosures/Screening.** Utility structures shall be enclosed or screened as shown on the approved plan set. Any utility structures not shown on the approved plan set shall require approval of an Administrative Permit and shall be designed to match existing fencing, screening and landscaping.
39. **American Disabilities Act.** The applicant shall provide appropriate access as required by the Americans with Disabilities Act (ADA).
40. **Site Maintenance.** All landscaping must be maintained as shown on the approved plans. Dead plant materials must be removed and replaced immediately to ensure compliance with this condition.
41. **Gates.** Access gates to the area located behind the grocery store and shop building shall be programmed to automatically close at 12:00 midnight and automatically open at 6:00 a.m. The gates shall be maintained in operational condition at all times.
42. **Outdoor Activities.** No vehicular access or pedestrian access and no outdoor activities are allowed within the area enclosed by gates during the time of gate closure, with the exception of emergency personnel. A sign shall be posted on exterior doorways to the gated area to advise employees of this condition.
43. **Trash Compactor.** The trash compactor shall not be run between the hours of 12:00 midnight and 6:00 a.m. A conspicuous sign shall be posted on the compactor advising employees of this condition.
44. **Air Quality Mitigation.**
- a. Use dust-proof chutes for loading construction debris onto trucks.

- b. Water or cover stockpiles of debris, soil, sand, or other materials that can be blown by the wind.
- c. Cover all trucks hauling soil, sand, and other loose materials or require all trucks to maintain at least two feet of freeboard.
- d. Sweep daily with water sweepers all paved access roads, parking areas, and staging areas at construction sites.
- e. Sweep streets daily or apply non-toxic binders to exposed stockpiles (dirt, sand, etc).
- f. Install sandbags or other erosion control measures to prevent silt runoff to public roadways.
- g. Replant vegetation in disturbed areas as quickly as possible.

45. Geology and Soil Mitigation. Development of the project would be subject to design and construction measures outlined in the project specific geotechnical report including the following:

- a. The proposed building may be supported on isolated interior spread footings and a deepened continuous perimeter footing bearing on native clay. Continuous footings should be at least 18 inches wide and isolated spread footings should be at least 24 inches wide. To reduce the potential for movement of the footings due to shrink and swell of the expansive clay and silt, the perimeter footing shall be bottomed at least 30 inches below the lowest adjacent exterior soil subgrade or the top of the select fill or lime-treated layer.
- b. Footing excavations shall be free of standing water, debris, and disturbed materials prior to placing concrete. If loose soil is encountered in a footing excavation, it should be over excavated to expose firm native clay. The excavated materials shall be wetted following excavation and maintained in a moist condition until concrete is placed.
- c. The use of water intensive landscaping around the perimeter of the building shall be avoided to reduce the amount of water introduced to the expansive clay subgrade.

46. Hydrology and Water Quality Mitigation. The following mitigation measures will be included in the project to conform to the current non-point source programs and to avoid or reduce hydrologic impacts to a less than significant level:

- a. Proposed development will comply with the NPDES permit issued to the City of San José and other co-permittees of the SCVURPPP, and will include measures to control pollutants discharged to the stormwater system. Future activities that require a permit from the City of San José will need to be evaluated for appropriate “best management practices” including, but not limited to the following: stormwater retention or detention structures; use of landscaped-based stormwater treatment measures, such as biofilters and vegetated swales to manage runoff from the site; minimization of impervious surfaces and increased use of permeable pavement; if inlet filters are used, a maintenance program to maintain the functional integrity of the systems; damp sweeping of streets and on site parking lots; routine storm drain cleaning; and covering of dumpsters and materials handling areas.

- b. Prior to commencement of any grading, clearing, or excavation, the project applicant would comply with the City of San José's Municipal Code and the SWRCB NPDES General Construction Activities Permit as follows:
 - 1) The applicant shall develop, implement, and maintain a Stormwater Pollution Prevention Plan (SWPPP). The SWPPP must specifically address Best Management Practices (BMPs) that will be included in the project to the maximum extent practicable, for both the construction and post construction periods. The SWPPP would include erosion and sediment control measures, waste disposal controls, post construction sediment, maintenance responsibilities, and non-stormwater management controls. The applicant shall maintain a copy of the most current SWPPP on site and shall provide a copy to any City representative or inspector on demand.
 - 2) The applicant shall file a Notice of Intent (NOI) to be covered by the NPDES General Permit for Construction Activity with the State Water Resources Control Board (SWRCB) 30 days prior to any construction on the site
 - 3) In addition, the SWPPP must include a description of erosion control practices, which may include BMPs as specified in the California Storm Water Best Management Practice Handbook for reducing impacts on the City's storm drainage system from construction activities.
- c. The project shall conform to the City's Grading Ordinance during construction. Prior to issuance of a grading permit, the applicant shall submit copies of the NOI and Erosion Control Plan (if required) to the City Project Engineer, Department of Public Works.

47. Noise Mitigation.

- a. Truck deliveries shall be prohibited between midnight and 6:00 a.m., in accordance with City Ordinance.
- b. Standard gaskets shall be installed around the truck loading dock opening to control noise at the loading dock.
- c. An eight-foot noise barrier (wall) shall be installed along the southwest property line to reduce noise impacts to adjacent residents due to the operation of the loading dock area. The eight-foot noise barrier shall be solid over the face and at the base of the barrier and constructed out of materials with a minimum surface weight of four pounds per square foot.
- d. Control noise from building mechanical systems, through acoustical louvers or baffles in air transmission paths, parapet walls, rooftop screen walls and sound attenuators, so that noise does not exceed 45 dBA at any residential property boundary.
- e. Noise control measures included in the building mechanical systems shall be reviewed and measurements made during the design phase by a qualified acoustical specialist to verify that noise impacts have been mitigated. The acoustical specialist will prepare a report for submittal to the City's Environmental Principal Planner demonstrating that necessary treatments have been included in the design prior to the issuance of a building

- f. All construction-related activity shall be limited to Monday through Friday between 7:00 a.m. and 7:00 p.m. consistent with the Construction Mitigation Management Plan measures.
- g. Designate a “noise disturbance coordinator” responsible for responding to any local complaints about construction noise. The disturbance coordinator would determine the cause of the noise complaints (e.g. beginning work too early, bad muffler, etc) and institute reasonable measures warranted to correct the problem. A telephone number for the disturbance coordinator would be conspicuously posted at the construction site.
- h. The contractor will be required to use “new technology” power construction equipment with state of the art noise shielding and muffling devices. All internal combustion engines used on the project site would be equipped with adequate mufflers and would be in good mechanical condition to minimize noise created faulty or poorly maintained engines or other components.
- i. Locate stationary noise-generating equipment as far as possible from existing nearby residences and other noise-sensitive land uses. Acoustically shield such equipment.
- j. Prohibit unnecessary idling of internal combustion engines.

CONDITIONS SUBSEQUENT

1. **Permit Expiration.** This Conditional Use Permit/Liquor License Exception Permit shall automatically expire two years from and after the date of adoption of the Resolution by the Planning Commission, or by the City Council on appeal, granting this Permit, if within such two-year period, the proposed use of this site has not commenced, pursuant to and in accordance with the provisions of this Conditional Use Permit/Liquor License Exception Permit. The date of adoption is the date the Resolution granting this Conditional Use Permit/Liquor License Exception Permit is approved by the Planning Commission. However, the Director of Planning may approve a Permit Adjustment to extend the validity of this Permit for a period of up to two years. The Permit Adjustment must be approved prior to the expiration of this Permit.
2. **Revocation, Suspension, Modification.** This Conditional Use Permit/Liquor License Exception Permit may be revoked, suspended or modified by the Planning Commission, or by the City Council on appeal, at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 3, Chapter 20.44, Title 20 of the San José Municipal Code it finds:
 - a. A violation of any conditions of the Conditional Use Permit/Liquor License Exception Permit was not abated, corrected or rectified within the time specified on the notice of violation; or
 - b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or

Attachments:

Location Map

Agency Memoranda

Correspondence

Draft Mitigated Negative Declaration

Evaluation of 24-Hour Uses Policy

Mitigation Management Plan

Plan Set

cc: Ric Craig & Robert Bearden, Craig and Grant Architects, 301 Hartz Avenue, Suite 213, Danville,
CA 94526
William Tribolet, Asset Management Group c/o Mission Square Shopping Center LTD, 11750
Sorrento Valley Road, San Diego, CA 92121
Kent Heasley, Albertsons, 250 Parkcenter Boulevard, Boise, ID 83706